IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. M/s Bhandari Motors & Anr. Vs. M/s Ratan Motors

S.B.CR.MISC. PETITION NO.611/2006

2. Kamal Baldi Vs. Pushpendra Kothari

S.B.CR.MISC. PETITION NO.637/2006

3. Kamal Baldi Vs. Anju Kothari

S.B.CR.MISC. PETITION NO.638/2006

4. Kamal Baldi Vs. Pushpendra Kothari

S.B.CR.MISC. PETITION NO.636/2006

DATE OF ORDER :: November 10, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.H.K.Jain, for the petitioner.

Mr.S.Saruparia for non-petitioner in S.B.Criminal Misc. Petition No.611/2006.

Mr. V.K.Mathur, for non-petitioner in S.B.Criminal Misc. Petition Nos. 636/2006, 637/2006 and 638/2006.

BY THE COURT:

These four criminal miscellaneous petitions involved

common question of law and facts and, therefore, with the consent of the learned counsel for the parties, they are heard and being decided together.

By the instant criminal misc. petitions under section 482 Cr.P.C., the petitioners have challenged the order reading over the substance of accusation to the petitioners, who are facing trial for the offence under section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter).

I have heard learned counsel for the parties. Carefully gone through the order by which the substance of accusation was stated by the trial court and read over to the petitioners.

It is contended by the learned counsel for the petitioners that while stating the substance of accusation, the trial court has not used the exact words of the accusation and, therefore, the order stating the substance of accusation is bad in law.

Learned counsel for the non-petitioners submit that a complaint has been filed against the petitioners for the offence under section 138 of the Act and prior to filing of the complaint, the notice was served demanding the cheque amount and thereafter on service of notice of complaint case, a copy of

complaint was made available to the petitioners and the trial court while stating the substance of accusation as envisaged under section 251 Cr.P.C. since the complaint case under section 138 of the Act is trialble as a summon case and, therefore, the Magistrate was required to state the substance of accusation from the complaint filed by the petitioners, a copy of which has already been served on the complainant.

The learned counsel for the petitioners has relied on a decision in Sishir Kumar Deb vs. Sachindra Ch. Deb, **AIR 1967 TRIPURA 30** and in Basha & Ors. vs. State of Mysore, **AIR 1969 MYSORE 277.**

In Basha & Ors. Vs. State of Mysore (supra), it was held that in summon case, the Magistrate should state particulars with such clarity as would make accused understood all ingredients of the offence.

In Sishir Kumar Deb vs. Sachindra Ch. Deb (supra), it was held that Magistrate is bound to record the particulars put by him and the statement of accused under section 242 Cr.P.C. (Old Cr.P.C.).

Learned counsel for the non-petitioners have relied on a

decision of this Court in S.B.Criminal Revision Petition No.845/2005 (Shri Gopal Krishna vs. Smt. Radha Devi), wherein this Court held that requirement of section 251 Cr.P.C. is that when in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

In Bharat K. Gupta vs. Arun Kumar & Anr., **(2000) 10 SCC 658,** while examining the order of High Court by which the proceeding under section 138 of the Act was quashed solely on the ground that the order of Magistrate dt. 28.2.1995 was not passed in compliance of section 251 Cr.P.C., the Magistrate has not recorded that the petitioner, who was respondent before the Apex Court was responsible to or in charge of the firm for conduct of the business so as to attract the provisions of section 141 of the Act. The Hon'ble Supreme Court held that the order of High Court is patently wrong; firstly, because, while complying with section 251 of the Code of Criminal Procedure the Magistrate is required to incorporate the substance of accusation and not the details as appearing in the complaint; secondly, because, liability under section 141 of the Act is not limited to that of a single director of a company or a single

partner of a firm; and, thirdly, because, in the complaint there is a specific averment that respondent 1 runs business of their firm named and styled as M/s Arun Oil Industries

Keeping in view the aforesaid decision of the Hon'ble Supreme Court, in my view in stating the substance of accusation, the requirement of section 251 Cr.P.C. has been fully complied with. More so, the petitioners have failed to show as to how they have been prejudiced. In the circumstances, therefore, it cannot be said that the reading over the substance of accusation in compliance of section 251 Cr.P.C. by the trial court suffers from any error or illegality warranting interference in the inherent jurisdiction. It cannot be said that the order impugned would result in serious miscarriage of justice of abuse of process of any court.

The petitions are, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-